

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit

FILED

October 21, 2008

No. 08-10066
Conference Calendar

Charles R. Fulbruge III
Clerk

TERRY JAMES

Plaintiff-Appellant

v.

KATRENA SCOTT

Defendant-Appellee

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:07-CV-419

Before KING, BARKSDALE, and OWEN, Circuit Judges.

PER CURIAM:*

Terry James appeals the district court's dismissal of his 42 U.S.C. § 1981 action for failure to state a claim. James has filed a motion for leave to proceed in forma pauperis (IFP) on appeal, challenging the district court's denial of IFP and certification that his appeal would not be taken in good faith. See *Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997); 28 U.S.C. § 1915(a)(3); FED. R. APP. P. 24(a)(3). James argues that defendant Katrena Scott's denial of his insurance claim was based on discriminatory intent.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

James has not shown that the district court erred in determining that he had not alleged sufficient facts to show that Scott acted with discriminatory intent in denying his insurance claim. See *Green v. State Bar of Tex.*, 27 F.3d 1083, 1086 (5th Cir. 1994). James is not entitled to relief because his pleading “requires more than labels and conclusions, and . . . [f]actual allegations must be enough to raise a right to relief above the speculative level on the assumption that all the allegations in the complaint are true (even if doubtful in fact).” *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1965 (2007) (citation omitted). This appeal is without arguable merit and is thus frivolous. See *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983). Accordingly, James’s IFP motion is DENIED and the appeal is DISMISSED. See *Baugh*, 117 F.3d at 202 & n.24; 5TH CIR. R. 42.2.